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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/256,647	02/23/1999	GIGI CHU	19463-1	1090
7590	12/14/2004		EXAMINER	
Patrick J. Finnegan Epstein, Edell, Shapiro & Finnegan, LLC 1901 Research Boulevard, Suite 400 Rockville, MD 20850			DINH, DUNG C	
			ART UNIT	PAPER NUMBER
			2152	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/256,647	CHU ET AL.	
	Examiner	Art Unit	
	Dung Dinh	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 August 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3,5-9,16,17 and 19-39 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1-3,5-9,16,17 and 23 is/are allowed.

6) Claim(s) 19-22,24-35,37 and 39 is/are rejected.

7) Claim(s) 36 and 38 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION***Response to Arguments***

Applicant's arguments filed 8/10/04 have been fully considered but they are not persuasive with respect to claims 24 and 27. Applicant argued that it would not have been obvious to combine the teaching of Downs and Bisdikian and that there is no suggestion on how one might have modified Bisdikian's network monitoring system. The argument is not persuasive because the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Claims Status

Claims 1-3, 5-9, 16-17, 19-39 are now pending.

Claims 1-3, 5-9 and 23 were indicated as containing allowable subject matters in prior office action.

Amended claims 16 and dependent claims 17 and 23 are allowable.

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New claims 36 and 38 are allowable if amended to include all limitations of the parent claims.

Claims 19-22, 24-35, 37 and 39 are rejected as stated below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 24, 19-22, 25, 26, 30, 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisdikian et al. US patent 6,205,413 and further in view of Downs et al. US patent 6,112,243.

As per claim 24, Bisdikian teaches a method for monitoring network-based services capable of collecting data about end-user experience and network performance data [col.2 lines 1-5, col.3 lines 35-50]. Bisdikian teaches the collection process can be run on an end-user' device [col.3 line 57-50 "... coexisting on the same computer that a regular subscriber uses"] and sending

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collected result to experience test server [fig.4 server 40, col.5 lines 42-51]. Bisdikian does not specifically disclose how the network performance monitoring tasks are distributed to the end-users' computers. Downs teaches a method for distribute tasks to various end-user devices (resource provider computers) over the Internet [col.5 lines 25-39] and reporting the result from the end-user device to the server [col.2 line 24]. Downs teaches configuring the end-user devices to notify the server when the end-user device is available and capable of processing an assigned task [see abstract, col.6 lines 25-45]. Hence it would have been obvious for one of ordinary skill in the art to combine the teaching of Downs to Bisdikian because it would have enable distribution of the monitoring tasks over the Internet to end-user devices that are available and capable of running the monitoring tasks.

As per claim 19, Downs teaches distribute the task over time to available devices [col.4 lines 10-32].

As per claim 20, Downs teaches checking quota limits [col.6 lines 55-6-] before instructing the user-device (resource provider) to run a task.

As per claims 21-22, since the availability of end-user device that can run the test (resource-provider) changes dynamically [see Downs col.3 lines 29-34], it is apparent that the

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Bisdikian as modified would be distributing tests over time and dynamically changing test allocation among user-device without prior knowledge.

As per claims 25 and 26, it is apparent that the test and transmission of the collected data would operate transparent the user operating the end-user device. It would have been obvious for one of ordinary skill in the art to make the test and transmission process transparent to the end-user because it would have limit intrusion and disturbance on the end-user experience.

As per claim 34, Bisdikian teaches the end-user devices are connected to the distributed network under control of the user who are customer of a provider of network-based service (apparent from col.3 lines 59 "subscriber"). Downs teaches the end-user device can be connected and disconnected the network at any time by the user (Downs col.3 lines 33-38).

As per claims 27-33 and 35, they are rejected under similar rationales as for claims 24, 19-22, 25-26 and 34 above.

Claims 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisdikian et al. and Downs et al. and further in view of Bland et al. US patent 5,732,218.

As per claims 37 and 39, Bisdikian does not specifically disclose the user devices maintain information relating to their own testing state, and the experience server does not maintain

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state information for each individual user devices. In similar field of invention, Bland teaches a monitoring system which has monitoring tasks distributed on user devices [col.5 lines 24-37]. Bland teaches maintaining information locally on each user devices [col.3 lines 24-30] and the experience server maintains cumulative information [col.3 lines 40-67], i.e. does not maintain state information for individual user devices. Hence, given the teaching of Bland it would have been obvious for one of ordinary skill in the art to maintain locally at each user devices their own testing state information because it would have enable the user device to contact the experience server only occasionally; thereby would have reduced communication frequency to the experience server. [see Bland col.3 lines 27-29, col.5 lines 16-23].

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

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statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (571) 272-3943. The examiner can normally be reached on Monday-Thursday from 7:00 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (571) 272-3949.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dung Dinh
Primary Examiner
December 7, 2004